

General assembly resolution with forged signature declared void

May 03 2016 | Contributed by [Gün + Partners](#)

Introduction

Facts

Decision

Comment

Introduction

Pursuant to Article 445 of the Commercial Code (6102/2011), an invalidation action can be filed against general assembly resolutions that conflict with the law, articles of association – in particular, good-faith principles within three months from the date of the resolution.

The three-month period does not apply if there is a nullity decision in question. The previous Commercial Code regulated only invalidation cases, whereas general provisions applied to nullity cases, and case law was important. Nullity conditions are now regulated under the present Commercial Code, but the Court of Appeals' precedents remain important regarding the practical scope of application of invalidity or nullity conditions.

Facts

A dispute arose from a capital increase resolution taken at the general assembly meeting where the signature of the shareholder plaintiff's representative had been forged. The three-month period set out by law had expired when the plaintiff learned that it had taken on a large amount of debt, payable in order to protect its share percentage in the company.

However, a lawsuit had been initiated requesting nullification of the decisions taken at the general assembly meeting regarding the capital increase. The plaintiff claimed in the proceedings that its representative's signature on the minutes had been forged and requested an injunction to stay enforcement of the decisions taken at the meeting.

During the proceedings the court postponed the obtaining of an expert report for signature verification and did not grant an injunction. Following these developments, the plaintiff presented a private expert report to convince the court that the signature had been forged.

The private expert report proved beyond doubt that the signature of the plaintiff's representative was not genuine. The court thus stayed the enforcement of the decisions taken at the general assembly meeting without requiring any deposit and accelerated receipt of an expert report. The court-appointed expert's report also found that the signature was forged.

Decision

As it was established without doubt that the signature on the general assembly meeting minutes did not belong to the plaintiff's representative, the court declared that the decisions taken at the general assembly were null and void and the Court of Appeals approved the decision of the first-instance court.

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In parallel with the civil action, a criminal case was initiated against the member of the board of directors who had forged the minutes and he was convicted at the end of the trial process.

Comment

If there is a serious deficiency which affects the validity of a general assembly resolution, the courts may declare it ineffective from the outset. In some cases, private expert reports have an impact on the courts. In the present case, on submitting the private expert report, the court decided for an injunction and then conducted an expert examination of the client's representative's signature, which led the court to reach its decision.

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